IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3050 of 2005
To
FIRST APPEAL No. 3084 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT & 1 - Appellant(s)
Versus
GHANSHYAMBHAI SHANTILAL BHATT & 2 - Defendant(s)

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Appearance :
MR RC KODEKAR AGP for Appellant(s) : 1 - 2.
MR KM SHETH for Defendant(s) : 1 - 2, 2.2.1, 2.2.2,2.2.3
RULE SERVED for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 03/05/2006

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. All the above numbered appeals filed under Section 54 of the Land Acquisition Act, 1894 (“the Act” for

short) read with Section 96 of the Civil Procedure Code, 1908, are directed against the common judgment and award dated May 3, 2004 rendered by 3rd Joint Civil Judge (Senior Division), Vadodara in Land Reference Case Nos.1634 of 1998 to 1655 of 1998 and Land Reference Case Nos. 1657 of 1998 to 1669 of 1998, by which the claimants are awarded additional compensation of Rs.17.50 per sq.mtr. for their acquired lands over and above compensation of Rs.4.50 per sq. mtr. awarded by the Special Land Acquisition Officer.

2. A proposal was made to acquire the lands of village Choranda, Taluka : Karjan, District : Vadodara for the public purpose of construction of Bachar and Vadava Branches under Narmada Canals Project. On scrutiny of the said proposal, the State Government was satisfied that the lands of village Choranda were likely to be needed for the said public purpose. Therefore, the notification under Section 4 of the Act was issued which was published in the government gazette on February 8, 1996 in Award Case No.17 of 1993 and on February 19, 1996 in Award Case No. 55 of 1994. The land owners were served with the notices under Section 4 of the Act. They had filed objections against the proposed acquisition. After

considering their objections, the Special Land Acquisition Officer submitted his report under Section 5 A(2) of the Act to the State Government. On consideration of the said report, the State Government was satisfied that the lands of village Choranda were needed for the public purpose of construction of Bachar and Vadava Branches under under Narmada Canals Project. Therefore, a declaration under Section 6 of the Act was made which was also duly published in the government gazette. The interested persons thereafter were served with the notices under Section 9 of the Act for determination of compensation payable to them. Having regard to the material placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.4.50 per sq. mtr. though their claim was that they were entitled to the compensation at the rate of Rs.40.00 per. sq. mtr. The claimants were of the view that the offer of compensation made by the Special Land Acquisition Officer was inadequate. Therefore, they filed written applications requiring the Special Land Acquisition Officer to refer the matters to the Reference Court for determination of compensation payable to them. Accordingly, References were made to the District Court,

Vadodara which were registered as noticed above.

3. On behalf of the claimants, Mr. Ghanshyambhai Shantilal Bhatt who was the claimant in Land Reference Case No. 1667 of 1998 was examined at Exh. 16. According to him, all the lands acquired were situated near each other and that their lands were fertile lands. According to him, all the claimants were able to take two crops in a year as the water facility was available to the lands in question. It was further stated by him that the lands of village Nishaliya were acquired for the public purpose and that the claimants therein were paid compensation at the rate of Rs.11.00 per sq. mtr. in Land Reference Case Nos. 108/92 to 114/92. The witness produced the award relating to the lands of village Nishaliya at Exh. 49. It was further stated by the said witness that the fertility of the lands acquired from village Choranda and that of the lands acquired from village Nishaliya was the same and the acquired lands were irrigated. According to him, many industries were set up in village Choranda and therefore the claimants were entitled to the enhanced compensation.

4. The Special Land Acquisition Officer i.e.

Chandrakant Shanabhai Solanki was examined by the acquiring authorities at Exh. 56. What was maintained by him was that he had determined the compensation payable to the claimants after taking into consideration the relevant facts of the case and therefore the claimants should not be paid enhanced compensation. He has stated before the Reference Court that there were no facilities of higher secondary school, road, railway station etc. in village Choranda and therefore he was justified in determining the market value of the lands acquired at the rate of Rs.4-50 per sq. mtr. It was asserted by him that water facility was not available to the acquired lands and therefore the claim of the claimants that they were able to take two crops in a year should not be accepted by the Court.

5. On appreciation of the evidence adduced by the parties, the Reference Court was of the opinion that the previous award rendered by the Reference Court relating to the lands of village Nishaliya could be looked into for the purpose of determining the market value of the lands acquired in the instant case. After placing reliance on the previous award, the Reference Court, on ultimate analysis, has held that the claimants

are entitled to the additional compensation at the rate of Rs.22.00 per square meter for their acquired lands by the judgment and award dated May 3, 2004, giving rise to the abovenumbered appeals.

6. This Court has heard Mr. R.C. Kodekar, learned A.G.P. appearing for the appellants as well as Mr. K.M. Sheth, learned advocate appearing for the claimants, and Mr. A.D. Oza, learned advocate appearing for the respondent No.2 i.e. Executive Engineer, Narmada Project Canal Distribution Division No.5, Karjan, District : Vadodara, at length and in great detail. This Court has also considered the documents produced by the learned counsels for the parties for perusal of the court.

7. From the record of the case, it is evident that the claimants have relied on the previous award produced at Exh.49 in support of their claim for enhancement of compensation. Exh. 49 is the judgment and award dated October 30, 2001 rendered by the learned 4th Joint Civil Judge (SD), Vadodara in Land Reference Cases No.108 of 1992 to 114 of 1992. In the said case, the notification under Section 4(1) of the Act was published in the

government gazette on October 20, 1986 for acquiring the lands of village Nishaliya for the public purpose of construction of Luwara Branch under Narmada Canals Project. The Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.1.80 per sq. mtr. Feeling aggrieved, the claimants had sought References. The Reference Court awarded compensation at the rate of Rs. 11.00 per sq. mtr. in all though the claim of the claimants was that they should have been awarded compensation at the rate of Rs.16.25 per sq. mtr. It is a settled principle of law that the award rendered by the Reference Court in respect of similar lands and which has become final can be taken into consideration while determining the market value of the lands acquired from the adjoining village. The witness examined on behalf of the claimant has asserted that village Nishaliya is situated quite near village Choranda from which the lands were acquired. It is also stated by him that the fertility of the lands which were acquired from village Choranda and that of the lands acquired from village Nishaliya was the same. The assertion made by the said witness that the claimants were taking two crops in a year could not be demonstrated to be untrue by the appellants. Under the

circumstances, this Court is of the opinion that the Reference Court did not commit any mistake in placing reliance on the previous award relating to the lands of village Nishaliya for the purpose of determining the market value of the lands acquired from village Choranda.

8. It may be mentioned that in the previous award the notification under Section 4 (1) of the Act was published in the government gazette on October 20, 1986, whereas in the instant case the notification under Section 4 (1) of the Act was published in the government gazette on two different dates i.e. on February 8, 1996 and February 19, 1996. It is also settled principle of law that if there is lapse of time in publication of notifications issued under Section 4 (1) of the Act, reasonable rise in the price of the lands should be considered. In catena of decisions, the Supreme Court has held that normally rise in price of the lands at the rate of 10% per annum is reasonable if there is long gap in the publication of the notifications issued under Section 4 (1) of the Act. The Reference Court has, therefore, granted 10% rise in the price of the lands while determining market value of the lands acquired in

the instant case as on February 8, 1996 and February 19, 1996.

9. On appreciation of the evidence adduced by the parties, this Court is of the opinion that correct principles of law have been applied by the Reference Court to the proved facts and no case is made out by the learned counsel for the appellants to interfere with the same in the instant appeals. The appeals which lack merits deserve to be rejected.

10. For the foregoing reasons, the appeals fail and are dismissed. There shall be no order as to costs. The registry is directed to draw award in terms of this judgment.

(J.M. Panchal, J.)

(Bankim N. Mehta, J.)

/JVSatwara/